



**MILPITAS CITY COUNCIL MEETING AGENDA  
AUGUST 2, 2005**

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**6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)  
455 E. CALAVERAS BOULEVARD**

**SUMMARY OF CONTENTS**

- I. ROLL CALL (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
  - CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**  
(Pursuant to Government Code Section 54956.9(a))  
City of Milpitas vs. Turner Construction et al., Santa Clara County Superior Court Case No. 103CV815946 Consolidated with Case NO. 103CV008400
  - CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**  
(Pursuant to Government Code Section 54956(a))  
City of Milpitas vs. Centerpointe Associates, L.L. Santa Clara County Superior Court Case No. 788366
  - CONFERENCE WITH LABOR NEGOTIATORS – COLLECTIVE BARGAINING**  
(Pursuant to Government Code Section 54957.6)  
City Negotiators: Ed Kreisberg, Carmen Valdez  
Employee Organizations: Milpitas Police Officers Association (MPOA), Milpitas Employees Association (MEA), International Association of Firefighters (IAFF)  
Under Negotiation: Wages, Hours, Benefits, Working Conditions
  - CONFERENCE WITH REAL PROPERTY NEGOTIATORS**  
(Pursuant to Government Code Section 54956.9)  
Property: Approximately 900 square feet of land adjacent to Barber Lane, located within and part of APN No. 086-03-019 in the City of Milpitas  
Agency Negotiator: Tambri Heyden  
Negotiating Party: Great Mall of the Bay Area  
Under Negotiation: Price and Terms
- III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present**
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. APPROVAL OF MINUTES (July 5, 2005)**
- VI. SCHEDULE OF MEETINGS**

**VII. PRESENTATION**

**Proclamation:** Milpitas National Night Out 2005

**VIII. CITIZENS FORUM**

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Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

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**IX. ANNOUNCEMENTS**

**X. ANNOUNCEMENT OF CONFLICT OF INTEREST**

**XI. APPROVAL OF AGENDA**

**XII. CONSENT CALENDAR (Items with Asterisks)**

**XIII. PUBLIC HEARINGS**

1. **Introduce Ordinance No. 238.2 Amending Title VIII, Chapter 5 (Water Efficient Landscapes) and Ordinance No. 240.1 Amending Title VIII, Chapter 6 (Water Conservation) of the City of Milpitas Municipal Code (Staff Contact: Dennis Carrington, 586-3275)**
2. **Adopt Resolution Confirming Assessments: Weed Abatement Report and Assessment List (Staff Contact: Albert Zamora, 586-3371)**
3. **Introduce Ordinance Nos. 120.43 and 208.40, Amendments to Title VIII of the Milpitas Municipal Code for 2005/06 and 2006/07 Water, Recycled Water, and Sewer Rate Adjustments (Staff Contact: Darryl Wong, 586-3345)**
4. **Approve Fairfield Midtown Vesting Major Tentative Tract Map (MA2005-4) Application to Create Two Parcels, Located at Corner of Abel, Main and Great Mall Parkway and Create 481 Condominium Units (APN's: 086-12-015, 016, 020) Zoned R4-TOD (Multi Family Very High Density with a Transit Oriented Overlay) Applicant: Fairfield Residential LLC (Staff Contact: Cindy Hom, 586-3284)**
5. **Approve the Amended Density Bonus, "S" Zone Approval Amendment No. SA2005-33, Use Permit Amendment No. UA2005-10 And Major Tentative Tract Map No. MA2005-3 for Apton Plaza – 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)**

**XIV. UNFINISHED BUSINESS**

6. **Consideration of Urgency Ordinance No. 270 Establishing a 45-Day Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries to Become Effective Immediately (Staff Contact: Steve Mattas, 586-3040)**
7. **Approve Art In Your Park Starlite Project Art Piece (Staff Contact: Renee Lorentzen, 586-3286)**

**XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1. Call to Order**

**RA2. Roll Call**

**RA3. Approval of Minutes (July 5, 2005)**

**RA4. Approval of Agenda**

**RA5. Presentation by Piercey Toyota Regarding a Proposed Dealership at Elmwood (Northeast Corner of I-880 and Great Mall Parkway) and Authorize the City Manager to Select a Consultant to Assist with Amending the Redevelopment Area Plan (Staff Contact: Tambri Heyden, 586-3280)**

**RA6. Receive Report From the Senior Facilities Subcommittee, Senior Center Project (Staff Contact: Mark Rogge, 586-3403)**

**RA7. Receive Progress Report on Library, Midtown East and West Parking Garages (Project No's. 8162, 8161, & 8170) (Staff Contact: Mark Rogge, 586-3403)**

**\*RA8. City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2005 (Staff Contact: Emma Karlen, 586-3145)**

**\*RA9. Approve Amendment to Memorandum of Understanding and Owner Participation Agreement with Apton Properties to Change the Total Number of Units in the Condominium Project from 96 to 93 Units (Staff Contact: Felix Reliford, 586-3071)**

**RA10. Agency Adjournment**

**XVI. REPORTS OF OFFICERS AND BOARDS**

**City Council**

**8. Approve the Mayor's Appointments to City Commissions (Mayor Esteves, 586-3029)**

**9. Consider Acquisition of Milpitas Unified School District Parcel at the NE Corner of Washington St. and Roger St. APN 026-11-024 (Mayor Esteves, 586-3029)**

**\* 10. Approve the Mayor's Reappointment to the San Francisco Regional Water System Financing Authority, Mayor Esteves (Staff Contact: Darryl Wong, 586-3345)**

**11. Report of: Councilmember Livengood Regarding Santa Clara Valley Transportation Authority (Councilmember Livengood, 586-3027)**

**\* 12. Review Past Terrace Gardens, Inc. Annual Financial Reports: Calendar Years 2001 To 2003 (Councilmember Giordano, 586-3032)**

**Sister Cities Commission**

**\* 13. Approve Expense Request from the Sister Cities Commission for Materials & Events Supporting the August 16 – 23, 2005 Tsukuba City Cultural & Student Exchange Visit (Staff Contacts: Holly Cuciz, 586-2602; Leslie Stobbe, 586-3352)**

**XVII. NEW BUSINESS**

- \* 14. Approve Temporary Dedicated Building Inspector (Staff Contact: Keyvan Irannejad, 586-3244)
- \* 15. Approve Marquee Request: Linda Arbaugh, Milpitas Community Library (Staff Contact: Lisa Ciardella, 586-3206)

**XVIII. ORDINANCES**

- 16. Waive Reading Beyond the Title and Introduce Ordinance No. 262.2, “An Ordinance of the City Council of the City Of Milpitas Amending Section I-310-4.10 of the Milpitas Municipal Code” Regarding the Open Government Ordinance (Staff Contact: Steve Mattas, 586-3040)
- \* 17. Waive Reading Beyond the Title and Adopt Ordinance No. 65.134 For Local Electrical Code Amendments In Conjunction With State Adoption Of The 2004 Edition Of The California Electrical Code (Staff Contact: Keyvan Irannejad, 586-3244)
- \* 18. Waive Reading Beyond the Title and Adopt Ordinance No. 271 To Add Chapter 20 To Title V Of The Milpitas Municipal Code Requiring The City Of Milpitas Create A Public Art Policy, Establish A Public Art Committee And Dedicate Capital Improvement Project Funds To The Acquisition And Installation Of Public Artwork To Further The Public Art Policy (“The Milpitas Public Art Master Plan And Funding Ordinance”) (Staff Contact: Richard Pio Roda, 586-3040)
- \* 19. Waive Reading Beyond the Title and Adopt Ordinance No. 124.27 Amending Title XI Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning And Annexation) And Amending Chapter V-500 (Neighborhood Beautification) Of The Municipal Code To Enhance The Code Enforcement Program (P-ZT2004-2). (Staff Contact: Tambri Heyden, 586-3280)

**XIX. RESOLUTIONS**

- \* 20. Adopt a Resolution Amending The Memorandum Of Understanding With Milpitas Supervisors Association (Staff Contact: Carmen Valdez, 586-3086)
- \* 21. Adopt a Resolution Granting Initial Acceptance: Great Mall Parkway/I880 Capacity Improvement Project, Project No. 4178, (Staff Contact: Greg Armendariz, 586-3317)
- \* 22. Adopt a Resolution Approving an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for Milpitas Sports Center and Cardoza Park Improvements, Project No. 8149 (Staff Contact: Greg Armendariz, 586-3317)
- \* 23. Adopt a Resolution Supplementing The Passage Of The Cable Television Franchise Ordinance Calling For Quality Service And Labor Harmony (Staff Contact: Bill Marion, 586-2701)
- \* 24. Adopt a Resolution Adjusting Salary Ranges for Adult Crossing Guard Classification (Staff Contact: Charlotte Pang, 586-2432/Carmen Valdez, 586-3086)

**XX. BIDS AND CONTRACTS**

- \* 25. **Approve Amendment No. 5 to Professional Services Agreement Between the City of Milpitas and Meyers, Nave, Riback, Silver and Wilson (Staff Contact: Steven Mattas, 586-3040)**
- \* 26. **Approve Purchase Orders for (1) General Legal and Personnel Services, (2) Arbitration, Grievance and Public Employee Relations Board (PERB) Hearings, and (3) Public Works Construction Litigation Expenses Provided by Meyers Nave for Fiscal Year 2005-2006 (Staff Contact: Steve Mattas, 586-3040)**
- \* 27. **Approve Interim City Manager Contract for Charles Lawson (Staff Contact: Richard Pio Roda, 586-3040)**
- \* 28. **Reject Bid and Authorize the Re-advertisement for Bid Proposals: Police Evidence Freezer, Project No. 8159 (Staff Contact: Jorge Bermudez, 586-3404)**
- \* 29. **Approve Permittee Dedication and Improvement Agreement For Calaveras Center Project No. 3164 (Staff Contact: Mehdi Khaila, 586-3328)**
- \* 30. **Approve Renewal Of Annual Software Support And Maintenance Fees With Cayenta For The Financial System Through June 30, 2006 (Staff Contact: Terry Medina, 586-2703)**
- \* 31. **Appropriate Funds and Award the Bid for Police Computers to Surah Inc. and HPM Networks (Staff Contact: Chris Schroeder, 586-3161)**
- \* 32. **Reject Bid Protest And Award Construction Contract: 2005 Annual Slurry Seal, Project No. 4223, And 2006 Annual Street Resurfacing, Project No. 4229, American Asphalt Repair And Resurfacing Co., Inc., (Staff Contact: Doug De Vries, 586-3313)**
- \* 33. **Approve Budget Appropriation: Annual Sidewalk Replacement Project No. 4067 (Staff Contact: Doug De Vries, 586-3313)**
- \* 34. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: City Reservoir Evaluation & Upgrades, Project No. 7091 (Staff Contact: Doug De Vries, 586-3313)**
- \* 35. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: Building Improvements (Tasman Gateway Monument Maintenance Access), Project No. 8135 (Staff Contact: Doug DeVries, 586-3313)**
- \* 36. **Approve Budget Appropriation and Award Construction Contract: 2005 ADA Sidewalk Ramps Project No. 4226 And Building Improvements Project No. 8135 (Staff Contact: Doug De Vries, 586-3313)**
- \* 37. **Authorize the City Manager to Execute the Agreement Amendment: JMH Weiss, Inc., Abel Street Midtown Improvements Project No. 8157 (Staff Contact: Steve Erickson, 586-3414)**
- \* 38. **Approve Amendments No. 4 and No. 5 to Valley Oil Company Contract (Staff Contact: Chris Schroeder, 586-3161)**
- \* 39. **Award Construction Contract; Shade America, Inc.: Tot Lot Sunshade Structure, Project No. 8102 (Staff Contact: Jorge Bermudez, 586-3404)**

**XXI. CLAIMS AND DEMANDS**

- \* 40. Authorize the Purchasing Agent to Dispose of Two Surplus Police Vehicles at Auction (Staff Contact: Chris Schroeder, 586-3161)
- \* 41. Approve a Change Order to PO C422306 to Interstate Paving and Grading for Emergency Road Repair (Staff Contact: Chris Schroeder, 586-3161)
- \* 42. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)

**XXII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, AUGUST 16, 2005, AT 7:00 P.M.**

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION  
at the City Attorney's office at Milpitas City Hall  
455 E. Calaveras Boulevard, Milpitas, CA 95035  
E-mail: [rpioroda@ci.milpitas.ca.gov](mailto:rpioroda@ci.milpitas.ca.gov)  
Fax: 408-586-3030  
Phone: 408-586-3040

*A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), select Open Government Ordinance under News Features.*

**BECOME A CITY COMMISSIONER!**

Currently, there are openings on the Economic Development Commission, Open Government Commission, Recycling & Source Reduction Advisory Commission and the Sister Cities Commission  
Applications are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or in the Agenda rack outside the Council Chambers. Contact the City Clerk's Office (586-3002) for information.

## **AGENDA REPORTS**

### **XIII. PUBLIC HEARINGS**

- 1. Introduce Ordinance No. 238.2 Amending Title VIII, Chapter 5 (Water Efficient Landscapes) and Ordinance No. 240.1 Amending Title VIII, Chapter 6 (Water Conservation) of the City of Milpitas Municipal Code (Staff Contact: Dennis Carrington, 586-3275)**

#### **Background**

The City's water efficient landscape ordinance was adopted in 1993 in accordance with AB 325, and addresses requirements to minimize use of water for landscape irrigation. AB 325 also requires use of recycled water for landscape use if feasible and cost effective. The city's water conservation ordinance was adopted in 1994. The ordinance was adopted in part to reduce the City's reliance on potable (drinkable) water, and to promote conservation and efficient use of water. In addition, since the San Jose/Santa Clara Water Treatment Plant (WPCP) had recycled water available for use, this ordinance increases use of recycled water throughout the City helps to meet flow discharge limitations from the WPCP by diversion to the recycled water system. Since that time, the City has developed the Abel and Main Street Streetscape Plans that identify landscaping that require certain species to create a streetscape design consistent with the Midtown Plan and the City's Streetscape Master Plan. Because the proposed Abel and Main Street landscape species are the only species, which can feasibly be planted in conformance with the City's design requirements, and because they require water of lower salt content than that provided by the recycled water, an exception to the recycled water use provision is needed. Therefore, the Engineering and Planning Divisions recommend modifications to the Municipal Code's Water Efficient Landscape Ordinance No. 238.2 (Title VIII, Chapter 5, Section 3.03) and Water Conservation Ordinance 240.1 (Title VIII, Chapter 6, Section 3.00). The proposed modifications are included in the Council's agenda packet. In addition, the proposed water conservation ordinance amendment 240.1 addresses other housekeeping changes, including proper referencing to the Table of Contents.

#### **Recommendation:**

1. Close the Public Hearing.
2. Waive reading beyond the title and introduce Ordinance No. 240.1
3. Waive reading beyond the title and introduce Ordinance No. 238.2.

- 2. Adopt Resolution Confirming Assessments: Weed Abatement Report and Assessment List (Staff Contact: Albert Zamora, 586-3371)**

**Background:** In accordance with Chapter 202, (Weed Abatement) of the Milpitas Municipal Code, the County Department of Agriculture and Resource Management Office of the Fire Marshal has filed with the City Clerk a report and assessment list on weeds abated within the City. The report has been posted and a notice of tonight's hearing posted and published.

The City's ordinance provides that the City Council "shall hear the report together with any objections of the property owner liable to be assessed.... and make such modifications on the proposed assessments as it deems necessary..." After confirmation by Council resolution, the resolution will be recorded and charges thereon become a lien on the land involved to be collected in the same manner as property taxes. A copy of the assessment list and the proposed resolution are included in the Council's agenda packet.

#### **Recommendation:**

1. Close the public hearing.
  2. Adopt resolution confirming assessments.
3. **Introduce Ordinance Nos. 120.43 and 208.40, Amendments to Title VIII of the Milpitas Municipal Code for 2005/06 and 2006/07 Water, Recycled Water, and Sewer Rate Adjustments (Staff Contact: Darryl Wong, 586-3345)**

**Background:** Water, recycled water and sewer rate adjustments were introduced for adoption by the City Council at its May 3, 2005 and June 7, 2005 meetings. The recommended 2005/06 and 2006/07 Utility Rates meet the Utility Financial Master Plan City revenue requirements for services which were adopted by the Council in 2003.

Per the advice of the City Attorney, additional public notifications and hearings are being coordinated to comply with Proposition 218 public notification requirements to property owners, necessitating re-introduction of the ordinances for final adoption. Letters were sent to all property owners notifying them of the rate adjustments. Public hearings must also be conducted to both adopt the proposed increase in rates and to receive and hear protests to the proposed increase in rates consistent with Proposition 218's public notice requirements. A hearing to consider any and all protests to the rate adjustments is scheduled for September 6, 2005. In order to streamline the rate adoption process, adoption of the ordinances is scheduled for August 15, 2005. Passage of the ordinance will be contingent upon the results of the protest hearing on September 6, 2005.

**Discussion:** The proposed rates are unchanged from those introduced for approval at the May 3 and June 7 Council meetings.

**Water Rates:** Increases are needed due to increased operating costs and infrastructure replacement costs, and are consistent with the Utility Financial Master Plan. For a typical single family resident, water cost will increase bimonthly (every two months) from \$58.40 to \$63.26 in 05/06, and from \$63.26 to \$67.44 in 06/07. Similar increases will occur for other water and recycled water user categories as shown in the table below.

**Proposed 2005/06 and 2006/07 Water Rates**  
(FY 2005/06 - For meters read on or after September 19, 2005)  
(FY 2006/07 - For meters read on or after July 24, 2006)

<b>Water and Recycled Water Quantity Charges</b>	<b>Current Per hundred cubic feet</b>	<b>Proposed 2005/2006 per hundred cubic feet</b>	<b>Proposed 2006/2007 per hundred cubic feet</b>
Residential 0-20 hcf	\$1.29	\$1.40	\$1.49
> 20 hcf	\$2.71	\$2.93	\$3.13
Commercial, Industrial, and Institutional	\$2.95	\$3.19	\$3.40
Recycled Industrial Process	\$1.48	\$1.60	\$1.70
Recycled Dual-Plumb	\$1.48	\$1.60	\$1.70
Potable City	\$1.15	\$1.10	\$1.12
Potable irrigation all others	\$3.37	\$3.65	\$3.89
Recycled irrig formerly wells	\$0.63	\$0.68	\$0.68
Recycled agric	\$0.27	\$0.32	\$0.32
Recycled irrig city	\$0.55	\$0.55	\$0.61
Recycled irrig all others	\$2.70	\$2.92	\$3.11
Santa Clara County (Ed Levin Park)	\$1.16	\$1.02	\$1.02
<b>Bimonthly Fixed charges;</b>			



<b>typical increase for all other sizes (not shown)</b>			
Residential 5/8 inch meter	\$16.34	\$17.68	\$18.86
Non-residential ¾ inch meter	\$18.33	\$19.83	\$21.16
Residential Fire Service 2"	\$26.13	\$28.27	\$30.16
Non-Resid. Fire Service 2"	\$27.63	\$29.90	\$31.90

**Sewer Rates:** Increases are needed to fund wastewater Treatment Plant costs and infrastructure replacement costs, consistent with the Utility Financial Master Plan. For a typical single family resident, sewer use cost will increase bimonthly from \$50.25 to \$54.77 in 05/06 and from \$54.77 to \$59.70 in 06/07. In accordance with Federal Environmental Protection Agency requirements, other user categories are adjusted based upon sewage discharge strength, as shown in the table below.

**Proposed 2005/06 and 2006/07 Sewer Rates**  
(FY 2005/06 - For meters read on or after September 19, 2005)  
(FY 2006/07 - For meters read on or after July 24, 2006)

<b>Sewer Quantity Charges</b>	<b>Current Per hundred cubic feet</b>	<b>Proposed 2005/2006 per hundred cubic feet</b>	<b>Proposed 2006/2007 per hundred cubic feet</b>
Single Family bimonthly per dwelling unit	\$50.25	\$54.77	\$59.70
Multi-Family bimonthly per dwelling unit	\$36.48	\$39.49	\$43.14
Mobile Home bimonthly per dwelling unit	\$22.76	\$24.57	\$26.88
Commercial categories per hcf	\$1.80-\$3.44	\$2.06-\$3.50	\$2.20-\$3.93
Industrial categories per hcf	\$0.01-\$4.89	\$0.02-\$3.46	\$0.02-\$3.91
Institutional categories per hcf	\$1.93-\$2.30	\$2.13-\$2.75	\$2.29-\$2.91
Fixed charges			
Non-Residential bimonthly	\$8.48	\$9.24	\$10.08

**Recommendation:**

1. Close the public hearing for water, recycled water, and sewer rates adjustments.
2. Waive reading beyond the titles.
3. Introduce Ordinance No. 120.43 setting Water Service and Ordinance No. 208.40 setting Sewer Service.

4. **Approve Fairfield Midtown Vesting Major Tentative Tract Map (MA2005-4) Application to Create Two Parcels, Located at Corner of Abel, Main and Great Mall Parkway and Create 481 Condominium Units (APN's: 086-12-015, 016, 020) Zoned R4-TOD (Multi Family Very High Density with a Transit Oriented Overlay) Applicant: Fairfield Residential LLC (Staff Contact: Cindy Hom, 586-3284)**

**Background:** This item was continued from the June 7, 2005 City Council meeting and from the June 21, 2005 City Council meeting.

At its May 11, 2005 meeting, the Planning Commission voted to recommend approval of the Fairfield Midtown Vesting Major Tentative Tract Map (MA2005-4) to create two parcels totaling approximately 8 acres for the purpose of creating a 481 unit multi-family residential development

subject to 34 special conditions. In addition, the Commission approved the associated Site and Architecture Review (SZ2004-9) and Use Permit No. UP2005-3 for deviations to setbacks, number of building levels and amount of open space per unit.

The site is zoned R4-TOD, Multi-Family Very High Density Residential with a Transit Oriented Overlay and is located on vacant land bordered by Main and Abel Streets and Great Mall Parkway. Nearby uses include the Great Mall, the Monte Vista residential development, and light rail.

Each parcel will contain one building and a parking structure. The buildings will surround the parking structure and additional parking is provided along the driveway at the southern end of the site. The west parcel will be approximately 5.2 acres and the east parcel will be approximately three acres. Access to the site is provided through two driveways off of Abel Street and one off of Main Street. In addition, the project will include a new trail area along the southern boundary of the property, adjacent to Penitencia Creek.

Traffic impact fees owed total \$180,291 dollars. A portion of this would be paid by the agency as part of a \$400,000 contribution towards the applicant's development impact fees and as provided for in the project's owner participation agreement with the Redevelopment Agency. The park and open space requirement is 2.19 acres; a value of \$1,314,786. If land and/or improvements for park purposes cannot be dedicated in close proximity to the project, this requirement shall be satisfied as an in-lieu fee. More detail is provided in the Planning Commission staff report included in the Council's agenda packet.

**Recommendation:**

1. Close the Public Hearing.
2. Approve the Fairfield Residential Vesting Major Tentative Tract Map (MA2005-4), based on findings and special conditions contained in Council's agenda packet, dated August 2, 2005.

**5. Approve the Amended Density Bonus, "S" Zone Approval Amendment No. SS2005-33, Use Permit Amendment No. UA2005-10 And Major Tentative Tract Map No. MA2005-3 For Apton Plaza – 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)**

**Background:** Applications SA2005-33, UA2005-10 and MA2005-3 are for further modifications to a previously approved mixed-use development known as Apton Plaza, originally approved by the City Council on July 1, 2003 and subsequently amended on September 7, 2004.

**The significant project modifications are summarized as:**

- ☐ reduction of residential condominium units from 96 to 93;
- ☐ reduction of density bonus request to exceed the maximum density from 7 to 4 units;
- ☐ change in unit types and sizes to include more 2-bedroom, larger 3-bedroom, and the addition of 4-bedroom and 2-story units;
- ☐ addition of a 5<sup>th</sup> tower element at the northwest corner of the site;
- ☐ addition of a 4<sup>th</sup> residential floor along the south elevation; and
- ☐ increased height of the residential lobby and retail towers.

The other minor architectural and landscape modifications proposed are minor in nature. As amended, the project would consist of a 4-story mixed-use building with 3,000 sq. ft. of retail space and 93 residential condominium units. Design of the development is based on a land swap between the property owner and the City, which has already occurred, and includes a deviation from the MXD-TOD (Mixed Use Transit Oriented Development Overlay District) setback regulations, reduction in drive aisle inside the garage width and a parking reduction for one additional guest parking space for a total reduction 28 spaces (2 retail and 26 guest). Details

regarding the project design are discussed in the staff report and depicted in the plans in the Council's agenda packet.

The 4% density bonus the applicant seeks is to exceed the maximum density (40 units per acre) allowed under the Mixed Use land use designation with TOD overlay for a density bonus of 43 units per acre (4 units more than allowed under the existing land use designation). The applicant has agreed to reserve 19 affordable units (9 very low and 10 moderate income) to meet the density bonus requirements and Midtown Specific Plan affordable housing policies. The nine units reserved for very low income households (10% of the 89 units allowed under the land use) qualify the project for a density bonus.

A Negative Declaration (EIA No. EA2003-1), a statement briefly describing the reasons that the proposed project will not have a significant effect on the environment, was completed for this project and adopted by the City Council on July 1, 2003. The amendments to the project will not result in any environmental impact not already considered in the adopted Negative Declaration. However, as a result of environmental testing performed on a portion of the property that the City is acquiring from the landowner as part of the land swap, staff included a condition that requires an environmental assessment on the project site to determine if surface contamination from the adjacent railroad use exists.

These applications are subject to City Council review because of the Density Bonus request. The Planning Commission reviewed the amended project and recommended approval at its meeting on July 13, 2005. At this meeting, staff recommended the deletion of one condition and the modification of two others, which are reflected in the attached Recommended Findings and Conditions of Approval. The applicant is in agreement with all of the changes to the conditions.

**Recommendation:** Approve the amended Density Bonus, "S" Zone Approval Amendment No. SA2005-33, Use Permit Amendment No. UA2005-10 and Major Tentative Tract Map No. MA2005-3.

#### **XIV. UNFINISHED BUSINESS**

##### **6. Consideration of Urgency Ordinance No. 270 Establishing a 45-Day Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries to Become Effective Immediately (Staff Contact: Steve Mattas, 586-3040)**

**Background:** At its meeting of May 17, 2005, the City Council considered adoption of an urgency ordinance establishing a temporary moratorium on the establishment and operation of medical marijuana dispensaries. Although the motion to adopt the ordinance did not receive the required 4/5<sup>th</sup> vote for passage, the Council provided the City Attorney with direction to return with a version of the proposed moratorium as a regular ordinance. The attached interim ordinance, which will provide for a 45-day moratorium on such uses, and which may subsequently, following notice and public hearing, be extended for up to 22 months and fifteen days, will still require a vote of 4/5<sup>th</sup> of the Council to become effective.

Recently, Planning staff has received several written and verbal inquiries regarding the land use application process for medical marijuana dispensaries. As the Council is aware, the operation and location of medical marijuana dispensaries is a complicated issue. State and federal law are not in agreement on whether such facilities are legal, the state's laws on the issue are not clear, and community sentiment regarding such facilities and the purpose of their existence is mixed. Furthermore, the existence and operation of dispensaries is a relatively new concept and the full scope of the potential impacts of dispensaries is not known, although other California communities in which dispensaries have opened have reported the occurrence of such negative secondary impacts as:

- Increased crime in the vicinity of the dispensaries;
- Robbery of patients as they go in or leave the dispensaries;
- A burglary attempt on a dispensary;
- Increased DUIs in the vicinity of the dispensaries;
- Increased street dealing in the vicinity of the dispensaries;
- Individuals smoking marijuana in the vicinity of the dispensaries; and
- Reports of impacts on neighboring businesses due to the criminal element being drawn to dispensaries.

Based upon these reports, it is clear that allowing medical marijuana dispensaries within the City poses a risk to the public safety, health and welfare. Planning staff, working in cooperation with the Interim City Manager and the City Attorney's office, is working to draft an amendment to the zoning ordinance to permit such dispensaries as conditional uses in three zoning districts (HS, M1 & M2) and to provide similar regulations as adult businesses. As an interim measure, however, the Council may wish to consider the adoption of a temporary moratorium on these uses until such time as the City can adopt a comprehensive regulatory framework.

Pursuant to Government Code Section 65858, the City may establish a 45-day moratorium on the establishment prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is considering or studying or intends to study within a reasonable time. Moratoriums may be extended for up to 22 additional months provided that a current and immediate threat to the public safety, health and welfare still exists.

**Recommendation:** Consider the attached urgency ordinance and then:

1. Waive reading beyond the title; and
2. Adopt Ordinance No. 270 (pursuant to the provisions of Government Code 65858, the Ordinance shall be adopted and become effective immediately without a second reading if it receives a vote of at least four-fifths vote of the Council)

**7. Approve Art In Your Park Starlite Project Art Piece (Staff Contact: Renee Lorentzen, 586-3286)**

**Background:** At the June 27, 2005, Arts Commission meeting, the Milpitas Alliance for the Arts presented the three art model choices for the Art in Your Park Project at Starlite Park in Milpitas: 1) Starscape Bench, 2) Starlite Gates and 3) Community Pole. The Commission was informed that the Starlite Park neighbors as well as members from the Milpitas community were asked to vote for their favorite piece. The Neighborhood votes and the community votes were tallied separately with the following results:

Art Piece	Community Votes	Neighborhood Votes	Total
Starscape Bench:	110	59	<b>169</b>
Starlite Gates:	101	53	<b>154</b>
Community Pole:	23	8	<b>31</b>

At the recommendation of the City Council on June 7, 2005, staff forwarded the Art in Your Park request to the Arts Commission for approval and specified that the funds become available from the new Public Arts Fund FY 2005-06 budget.

The Milpitas Alliance for the Arts asked for the Arts Commissions recommendation to City Council to approve the Starlite Neighborhood's choice for "Starscape Bench" and to fund the Art in Your Park Project at Starlite Park in the amount of \$10,000.00.

The Milpitas Arts Commission voted to recommend the "Starlite Gates" for the Art in Your Park Project at Starlite Park and to fund the Art in your Park Project at Starlite Park in the amount of \$10,000.00.

Included in the City Council's packet for review is the Arts Commission June 25, 2005 unapproved meeting minutes and the Milpitas Alliance for the Arts, Art in Your Park Tally sheet. The Milpitas Alliance for the Arts will make a short presentation with all three models at the August 2, 2005, City Council meeting.

**Recommendation:** Approve an art piece for the Starlite Art in Your Park Project and approve funding for the Art in Your Park Project in the amount of \$10,000.00, from the new Public Arts Fund FY 2005-06, as specified at the June 7, 2005 City Council meeting.

## **XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1. Call to Order**

**RA2. Roll Call**

**RA3. Approval of Minutes (July 5, 2005)**

**RA4. Approval of Agenda**

**RA5. Presentation by Piercey Toyota Regarding a Proposed Dealership at Elmwood (Northeast Corner of I-880 and Great Mall Parkway) and Authorize the City Manager to Select a Consultant to Assist with Amending the Redevelopment Area Plan (Staff Contact: Tambri Heyden, 586-3280)**

**Background:** Piercey Toyota, currently located in San Jose, is interested in locating within the future auto mall to be constructed at the northeast corner of I-880 and Great Mall Parkway, zoned C2, General Commercial, immediately west of the Elmwood Correctional Facility. Piercey Toyota has requested to make a presentation to the City Council to introduce their organization and their product line.

In addition, during discussions with Piercey Toyota thus far, signage needs have been raised. Piercey Toyota has approached the Great Mall about co-locating signage on the Great Mall's existing off-site signs on I-680 and I-880. The Mall has expressed interest as they are desirous of upgrading the design of their existing freeway signs to be consistent with the significant renovations to the signage and entry features on-site at the Mall that were approved by the Planning Commission last month.

The Mall's I-880 signage is located on land that the Mall leases from the City. The Mall's I-680 signage is a private land lease. Given that the Great Mall and its off-site signage is located within its own redevelopment area, placement of Toyota's signage on the Mall's off-site signage would require an amendment to the redevelopment plan to merge the City's two redevelopment project areas. The nine-month amendment process could be a project of the City's new Economic Development Manager; soon to be hired. However, technical assistance from a redevelopment consultant is needed to assist with the plan amendment with the cost to be reimbursed by Piercey Toyota.

**Recommendation:** Authorize the City Manager to identify a redevelopment consultant to assist with the plan amendment and to bring back a negotiated contract for Redevelopment Agency approval once a consultant is selected.

**RA6. Receive Report From The Senior Facilities Subcommittee, Senior Center Project (Staff Contact: Mark Rogge, 586-3403)**

**Background:** The Senior Facilities Subcommittee met on June 6th to discuss the new Senior Center. The plan for the new Senior Center is to renovate the existing library building at the Civic Center after the library moves to its new location on North Main Street. Staff will provide a brief report on beginning the design process for the new Senior Center.

**Recommendation:** Note, receive, and file the report from the Senior Facilities Subcommittee on the Senior Center Project.

**RA7. Receive Progress Report on Library, Midtown East and West Parking Garages Project No's. 8162, 8161, & 8170 (Staff Contact: Mark Rogge, 586-3403)**

**Background:** The architect for the library continues with the Design Development phase. The architect for both the Midtown East and West parking garages is completing the Conceptual Design phase. Both projects are included in the Capital Improvement Program, and staff will provide a brief presentation on the design progress of these projects.

**Recommendation:**

1. Note, receive, and file the progress report on the design of the library and the Midtown East and West parking garages.
2. Approve recommendations for the Library Subcommittee to approve the garage concept plans and cost plans.

**\*RA8. City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2005 (Staff Contact: Emma Karlen, 586-3145)**

**Background:** In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended June 30, 2005 is submitted for your review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of June 30, 2005.

As of June 30, 2005, the principal cost and market value of the City's investment portfolio was \$246,195,940.08 and \$244,915,929.54 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended June 30, 2005 was 2.92%. The comparative benchmarks for the same period were 2.72% for LAIF (Local Agency Investment Fund) and 3.17% for the average 2 year Treasury Note. Excluding the long-term GNMA securities and Repurchase Investment Agreement, the weighted average maturity of the portfolio was 462 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

**Recommendation:** It is recommended that the City Council/Agency Board note, receipt, and file the investment report for the quarter ended June 30, 2005.

**\*RA9. Approve Amendment to Memorandum of Understanding and Owner Participation Agreement with Apton Properties to Change the Total Number of Units in the Condominium Project from 96 to 93 Units (Staff Contact: Felix Reliford, 586-3071)**

**Background:** On April 20, 2004, the Redevelopment Agency approved a Memorandum of Understanding (MOU) with Apton Plaza for the development of a 96-unit rental apartment complex with 3,000 square feet of commercial retail space on the ground floor at North Main Street and Weller Lane. The Redevelopment Agency assistance was authorized specifically for the development of 19 deed-restricted, affordable housing units. The Agency assistance will also include 20% of the total city fees to support and assist the affordable housing units. At the time the MOU was approved, the Agency was advised that the MOU would be incorporated into a subsequent Owner Participation Agreement (OPA). The OPA sets out in detail the responsibilities of the Agency, and the developer, specifically with regards to the timing, benefits, dispute resolution, and anti-discrimination requirements. The OPA is now ready for Agency approval.

In summary, the OPA commits a total of \$1,230,560 in affordable housing funds for the development of 9 very low and 10 moderate income units. Funds are pledged in the form of a grant of \$852,560 and a loan of \$378,000. Sufficient low and moderate housing funds are available. At its meeting on May 12, 2004, the Planning Commission reviewed the proposed project and recommended approval of the OPA to the City Council.

On December 21, 2004, the Redevelopment Agency approved an amendment to the MOU and OPA authorizing the revision to the project from apartments to “for-sale” condominium units. The total number of 96-units and 19-affordable units remained the same. The Planning Commission approved this request at its meeting on December 7, 2004.

The current proposal request is to amend the MOU and OPA to reduce the total number of units in the project from 96 to 93 units. At its meeting on July 13, 2005, the Planning Commission reviewed the proposed MOU and OPA amendments and recommended approval to the City Council.

Included in the Agency’s agenda packet is the amended MOU and OPA approving the revised project from 96 to 93 units.

**Recommendation:** Approve the amended Memorandum of Understanding and Owner Participation Agreement with Apton Properties to authorize the reduction in units from 96 to 93 with the requirement of 19 of these units to be affordable.

**RA10. Agency Adjournment**

**XVI. REPORTS OF OFFICERS AND BOARDS**

**City Council**

**8. Approve the Mayor's Appointments to City Commissions (Mayor Esteves. 586-3029)**

**Background:** Mayor Esteves recommends the following Milpitas residents to be appointed to Commissions noted below.

**Economic Development Commission**

Appoint Pat Songsiri from Alternate No. 1 to existing vacancy with a term expiring April 2007.

Appoint Minh Nguyen from Alternate No. 2 to Alternate No. 1 with a term expiring April 2007.  
Appoint Tom Valore to Alternate No. 2 with a term expiring April 2006.

Open Government Commission

Appoint Denny Weisgerber to an existing vacancy with a term expiring August 2007.  
Appoint Tom Valore to an existing vacancy with a term expiring August 2007.  
Appoint Paul Hay to an existing vacancy with a term expiring August 2007.  
Appoint Edward Blake, if one of the above is not appointed.  
Appoint Dem Nitafan, if one of the above is not appointed.

Sister City Commission

Appoint Roselda Mateo from Alternate No. 1 to the existing vacancy with a term expiring September 2007.  
Appoint Massoud Arefi from Alternate No. 2 to the Alternate No. 1 position with a term expiring September 2006.  
Appoint Beverly McCarter to the Alternate No. 2 position with a term expiring September 2005.

Copies of current applications for the applicants are included in the Council's agenda packets.

**Recommendation:** Consider the Mayor's recommended Commission appointments and move to appoint new Commissioners.

**9. Consider Acquisition of Milpitas Unified School District Parcel at the Corner of Washington Street and Roger Street (Mayor Esteves, 586-3029)**

Mayor Esteves asks Council to consider directing staff to work with MUSD, PG&E, and Hetch-Hetchy Water with regard to acquiring the specified land from the School district for a potential green space. Explore alternatives, funding sources, conditions of purchase and maintenance.

**\* 10. Approve the Mayor's Reappointment to the San Francisco Regional Water System Financing Authority, Mayor Esteves (Staff Contact: Darryl Wong, 586-3345)**

**Background:** Mayor Esteves is recommending the reappointment of Councilmember Robert Livengood as the representative to the Board of Directors of the Financing Authority created by SB 1870 to provide means for funding improvements to the San Francisco Public Utility Commission water supply system. On July 5, 2005 the Council approved the Mayor's recommendation to reappoint Councilmember Livengood to the Bay Area Water Supply and Conservation Agency that plans and acquires supplemental water supplies and encourages regional recycled water use and plans.

**Recommendation:** Reappoint Councilmember Robert Livengood to the San Francisco Regional Water System Financing Authority to a four-year term.

**11. Report of: Councilmember Livengood Regarding Santa Clara Valley Transportation Authority**

**Background:** Councilmember Livengood will discuss Mr. Michael Burns, newly appointed director for the VTA; and, the Long Term Capital Expenditure Plan proposed in a memo by Mayor Ron Gonzales.

**Recommendation:** Hear report of Councilmember Livengood.

**\*12. Review Past Terrace Gardens, Inc. Annual Financial Reports: Calendar Years 2001 To 2003: Councilmember Giordano**



**Background:** Two previous Annual Fiscal Reports for Terrace Gardens, Inc., calendar years 2001 to 2003, are presented for Council review. In both of the two reports the independent auditor concludes that the financial statements fairly present the financial position of Terrace Gardens, Inc. and is in conformity with generally accepted accounting principles.

**Recommendation:** Note receipt and file.

### **Sister Cities Commission**

- \* 13. **Approve Expense Request from the Sister Cities Commission for Materials & Events Supporting the August 16 – 23, 2005 Tsukuba City Cultural & Student Exchange Visit (Staff Contacts: Holly Cuciz, 586-2602; Leslie Stobbe, 586-3352)**

**Background:** On February 17, 2004, the City of Milpitas updated and extended its Memorandum of Understanding (MOU) with the City of Tsukuba, Japan, through December 2008. On August 16 – 23, 2005, a group of one adult chaperone and four exchange students from Tsukuba middle schools will conduct its ninth reciprocal sister city visit to Milpitas. The chaperone and students' families pay all travel expenses.

Included in the Council packet is the tentative itinerary for the Tsukuba delegation's visit, facilitated by Sister Cities Commission Vice Chair Echo Arthur, supported by Commissioner Debra Garcia and Milpitas community representatives, and Ms. Yutaka Suzuki, Tsukuba's Manager of the International Relations Division. The budget request outlined below includes appropriate gifts for ceremonial and greeting purposes.

The Commission reviewed estimated expenses for City of Milpitas ceremonial and greeting gifts at its July 28, 2005, meeting and recommends the following be provided:

<b>Item</b>	<b>Purpose/Event</b>	<b>Requested Amount for Council Approval</b>
Art Object	Official City Gift	\$275.00
Individual Gift	Gift bag items & wrap (5)	100.00
Friendship Party BBQ	Supplies to host dinner	250.00
SF Bay Cruise	Host SF day trip	135.00
SF Cable-Bus Tour	Host SF day trip	250.00
Packing materials	Prepare City gift for travel/ship	25.00
<b>TOTAL</b>		<b>\$1,035.00</b>

Council budget approval for fiscal year 2005-06 provides up to \$2,600 per sister city per year for a total budget of \$7,800. A total of \$1,565 would remain to support sister city activities with Tsukuba City.

**Recommendation:**

1. Approve expenses for the Tsukuba City August 2005 cultural and student exchange visit from the Council's Community Promotions budget.
2. Authorize the City Manager to execute invoices not-to-exceed \$1,035.00.

## **XVII. NEW BUSINESS**

- \* 14. **Approve Temporary Dedicated Building Inspector (Staff Contact: Keyvan Irannejad, 586-3244)**

**Background:** KB Home is requesting for a dedicated full time building inspector for Elmwood/Terra Serena Project to provide continuous and uninterrupted service for the duration of construction. Such service was provided earlier by the City of Milpitas to other major projects and proved to be beneficial to both sides. It allows City to provide high level of customer service by considerably reducing the number of re-inspections, streamlining and maintaining the construction schedule and minimizing the number of construction revisions. Existing workload will not allow us to provide a dedicated building inspector from our current staff to the KB project and necessitate hiring a temporary inspector at the annual cost of \$151,756. This service will require the developer to pay the full cost of the service, which includes salary and benefits for the building inspector and an administrative fee. The estimated cost of service for the eleven months is \$139,109.

**Recommendation:**

1. Approve the developer's request.
2. Approve budget appropriation for the above amount less the administrative fee into the Building Inspection Division's budget.

**\* 15. Approve Marquee Request: Linda Arbaugh, Milpitas Community Library (Staff Contact: Lisa Ciardella, 586-3206)**

Linda Arbaugh, Community Librarian, has requested to use the City of Milpitas marquee as follows:

Marquee Request (to be displayed August 23-October 31, 2005)  
Library Now Open  
Mondays 10am-9pm  
Info: 262-1171

The City Council pursuant to Resolution No. 6310, Facility Use Rules and Regulations must approve all exceptions to the marquee policy.

**Recommendation:** Approve Linda Arbaugh, Community Librarian's, request to use the marquee August 23 – October 31, 2005.

**XVIII. ORDINANCES**

**16. Waive Reading Beyond the Title and Introduce Ordinance No. 262.2, "An Ordinance of the City Council of the City Of Milpitas Amending Section I-310-4.10 of the Milpitas Municipal Code" Regarding the Open Government Ordinance (Staff Contact: Steve Mattas, 586-3040)**

**Background:** The proposed ordinance presented by Vice-Mayor Gomez would establish the formation of a City Council subcommittee that would temporarily assume all of the powers and duties of the Open Government Commission. The City Council subcommittee would exist for one year or until the appointment of commissioners to the Open Government Commission.

**Recommendation:**

1. Motion to waive reading beyond the title for Ordinance No. 262.2.
2. Motion to introduce for first reading Ordinance No. 262.2, an ordinance of the City Council of the City of Milpitas amending Section I-310-4.10 of the Milpitas Municipal Code.

**\* 17. Waive Reading Beyond the Title and Adopt Ordinance No. 65.134 For Local Electrical Code Amendments In Conjunction With State Adoption Of The 2004 Edition Of The California Electrical Code (Staff Contact: Keyvan Irannejad, 586-3244)**

**Background:**

**California Electrical Code:** The State Building Standards Commission (SBSC) periodically adopts new state model building codes that apply to all cities and counties in California. The commission recently adopted the 2004 Edition of the California Electrical Code that will become effective on August 1, 2005. Local jurisdictions are permitted to make amendments to model codes that are reasonably necessary due to local climatic, geological or topographical conditions. The City of Milpitas Building Inspection Division has participated with several cities and counties in the East Bay, Peninsula and Monterey Chapters of the International Code Council (ICC), in the preparation of common code amendments to the 2004 Edition of the California Electrical Code. These amendments are found in this Electrical Code Ordinance.

The most significant amendments under proposal relate to the requirement for all new electrical services to be installed underground and for electrical disconnecting means to buildings to be at readily accessible locations for quick and safe power turn-off in emergency situations.

**Recommendation:**

1. Waive the reading beyond the title.
2. Adopt Ordinance No. 65.134 enacted as Chapter 6, Title II of the Milpitas Municipal Code to adopt and revise local amendments to the 2004 Edition of the California Electrical Code.

- \* 18. **Waive Reading Beyond the Title and Adopt Ordinance No. 271 To Add Chapter 20 To Title V Of The Milpitas Municipal Code Requiring The City Of Milpitas Create A Public Art Policy, Establish A Public Art Committee And Dedicate Capital Improvement Project Funds To The Acquisition And Installation Of Public Artwork To Further The Public Art Policy (“The Milpitas Public Art Master Plan And Funding Ordinance”)** (Staff Contact: Richard Pio Roda, 586-3040)

**Background:** The ordinance introduced for first reading at the Council’s July 5, 2005 meeting and is now presented for adoption at the Council’s August 2, 2005 meeting defines what would be considered public artwork to be located on, affixed or applied to City property. It also mandates that the City establish a Public Art Committee. The Committee’s primary task will be to review and recommend the selection and placement of Public Artwork. The Committee’s recommendations will be advisory to the City Council and Redevelopment Agency. The Public Art Committee will also review and provide advice and recommendations to the City and the Redevelopment Agency regarding the development of a Public Art Program Master Plan. The Public Art Program Master Plan will establish and guide the implementation of a Milpitas Public Art Policy. The Public Art Program Master Plan will (1) Survey opportunities throughout the City and the Redevelopment Agency District for suitable sites and areas for the placement of Public Art; (2) Provide advice as to the potential priority for Public Art installations; (3) Advise as to potential Public Artwork aesthetic themes; and (4) Advise as to the appropriate cataloguing and maintenance of Public Artwork. The Committee will recommend to the City Council for adoption program guidelines, policies and procedures to ensure the consistent administration of the Public Art Program.

The Ordinance also establishes a Public Art Fund. The City shall dedicate 1.5% of eligible project expenditures within the City’s annual Capital Improvement Projects to the acquisition and installation of Public Art. To establish a significant initial fund, the City shall provide an additional \$125,000 per year to the Public Art Fund for the first four years of the Public Art Master Plan, effective Fiscal Year 05/06. Three years from the effective date of the ordinance, the Council will review a minimum project eligibility threshold of \$1 million per CIP project for the application of the 1.5% formula.

**Recommendation:**

1. Motion to waive reading of Ordinance No. 271.

2. Motion to approve Ordinance No. 271, an ordinance of the City Council of the City of Milpitas to add Chapter 20 to Title V of the Milpitas Municipal Code requiring the City of Milpitas create a Public Art Policy, establish a Public Art Committee and dedicate Capital Improvement Project funds to the acquisition and installation of public artwork to further the Public Art Policy ("The Milpitas Public Art Master Plan and Funding Ordinance.").
3. Direct staff to post and/or publish Ordinance No. 271 in compliance with the California Government Code.

**\*19. Waive Reading Beyond the Title and Adopt Ordinance No. 124.27 Amending Title XI Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning And Annexation) And Amending Chapter V-500 (Neighborhood Beautification) Of The Municipal Code To Enhance The Code Enforcement Program (P-ZT2004-2). (Staff Contact: Tambri Heyden, 586-3280)**

**Background:**

On **July 5, 2005**, the City Council introduced Ordinance No. 124.27 with the following changes:

1. There should be no fines for violations of the Sign Ordinance. This language is shown in Section XI-30-9.04 on page 27 of the proposed ordinance and Section 11 on page 33 has been revised accordingly.
2. Decisions by the City Manager (with regard to the Neighborhood Beautification Ordinance) and his/her designees may be appealed to the City Council. No change to the proposed ordinance is necessary as this was already shown in Section V-500-3.06 on page 35 of the proposed ordinance.

In addition to changes to the proposed ordinance, the Council took the following actions:

3. Political Signs. The City Council did not authorize proceeding with modifying the political sign section of the Sign Ordinance to add a provision limiting the maximum aggregate area of political signs per candidate on a parcel. No change to the proposed ordinance is necessary as the ordinance had not yet been modified to include this Task Force recommendation.
4. Public Outreach. The proposed educational outreach program would inform businesses about the changes to the Sign Ordinance and the courtesy sign violation notice procedures. The program will involve using the City's website and search features, including the addition of sketches, utility bill insert notifications, direct mailings, e-mails sent by the city's various Chambers of Commerce and the Santa Clara County Association of Realtors to their members, press releases and articles to the English and non-English newspapers in the City, staff training, guest presentations by staff to the real estate industry, shopping centers and the various Chambers of Commerce, and distribution of flyers attached to business license applications for new businesses.
5. Continued Task Force Meetings. The Council did not authorize continued quarterly task force meetings to assist with the public outreach and provide suggestions for fine tuning the new code amendments.

**Recommendation:**

1. Waive reading beyond title.
2. Adopt Ordinance No. No. 124.27.
3. If the actions regarding 3, 4 and 5 above do not accurately reflect the Council's intent with its July 5, 2005 motion, an alternative motion is advised for clarity in the public record

**XIX. RESOLUTIONS**

**\* 20. Adopt a Resolution Amending The Memorandum Of Understanding With Milpitas Supervisors Association (Staff Contact: Carmen Valdez, 586-3086)**

**Background:** The City of Milpitas (City) and Milpitas Supervisors Association (MSA) entered into a Memorandum of Understanding (MOU) with an effective date of July 1, 2002 through December 31, 2005. The language in the MOU provides that that City will increase the base salary for employees in MSA by 2.5% effective the first full pay period in July 2005. The MOU also provides that the City shall make a total contribution to the LIUNA Pension fund equal to \$1.00 per hour, per employee covered by the MOU, up to forty (40) hours per week.

City staff and representatives of MSA have met and conferred in good faith regarding the City's contribution to the LIUNA Pension Fund described in Section 32.07.3 of the MOU, the scheduled wage increase described in Appendix A1 and A7 of the MOU and the possibility of an extension of the current MOU. The outcome of the meet and confer process included the following proposals:

- In lieu of the 2.5% base salary increase the City will contribute an additional \$1.00 per hour per week up to a maximum of 40 hours per week to the LIUNA Pension Fund for all MSA represented employees that are on paid status.
- Beginning the first full pay period in July 2005, MSA represented employees will only receive a 0.45% increase in their base salary.
- The current MOU will be extended for one (1) calendar year from January 1, 2006 through December 31, 2006.
- If the City approves an increase to the base salaries for any bargaining unit in the City, MSA represented employees will receive the same increase effective on the date agreed to by City Council or January 1, 2006, whichever date is later.

A copy of the recommended Side Letter to the MOU and Appendix "A" is included in the City Council Agenda Packet.

**Recommendation:** Adopt a Resolution to amend the current Memorandum of Understanding between the City of Milpitas and the Milpitas Supervisors Association to reflect the changes defined in the Side Letter dated July 21, 2005 and extend the MOU through December 31, 2006.

**\* 21. Adopt a Resolution Granting Initial Acceptance: Great Mall Parkway/I880 Capacity Improvement Project, Project No. 4178, (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** This project provides an increase in the traffic capacity of the existing Great Mall Parkway/I880 interchange. Improvements include the widening of the southbound off ramp, and adding a third eastbound through lane on Great Mall Parkway. The project has been successfully completed, and staff recommends that Council grant an initial acceptance and authorizes the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$44,674.78.

**Recommendation:** Adopt resolution granting initial acceptance of the project, subject to the usual one-year warranty period, and reduce the faithful performance bond to \$44,674.78.

**\* 22. Adopt a Resolution Approving an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for Milpitas Sports Center and Cardoza Park Improvements, Project No. 8149 (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** An Initial Study and Mitigated Negative Declaration (IS/MND) was prepared for future and current proposed Milpitas Sports Center and Cardoza Park Improvements, which includes the current Milpitas Sports Center Circulation Improvements, Project No. 8149, in accordance with the California Environmental Quality Act. The scope of potential improvements covered in the IS/MND include circulation and parking improvements within the Sports Center and School District properties and new driveway entries on Calaveras Boulevard with a new traffic signal at Carnegie Drive; a new Tennis Center with a pro shop/restroom structure;

replacement of the existing football field and track with a new soccer/football field; a ball field plaza and materials storage area; and an indoor pool. Proposed upgrades at Cardoza Park include improvements to the existing amphitheater and playground, new courts for volleyball, basketball and bocce; and expanded on-site parking. Other improvements include landscaping, drainage upgrades, utility upgrades, and related work. These proposed site improvements will be constructed in different phases, depending upon available funds.

The IS/MND was circulated for public review from April 21, 2005 to May 10, 2005. Copies were delivered to the State Clearinghouse of the Governor's Office of Planning and Research for review by State agencies. The public review process was advertised and the project site was posted. In addition to the public review process, a community meeting was also advertised and flyers mailed to surrounding residents. The community meeting was held last May 10, 2005, several neighbors attended. Staff answered their questions about the project, and no objections were raised. Staff did not receive comments related to the draft IS/MND, CEQA, or other environmental issues. The Initial Study/Mitigated Negative Declaration has been completed and is suitable for adoption.

**Recommendation:** Adopt a resolution approving an Initial Study/ Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the proposed Milpitas Sports Center and Cardoza Park Improvements, Project No. 8149.

- \* 23. **Adopt a Resolution Supplementing The Passage Of The Cable Television Franchise Ordinance Calling For Quality Service And Labor Harmony (Staff Contact: Bill Marion, 586-2701)**

**Background:** The City Council adopted Ordinance 139.3 on July 5, 2005 renewing its franchise with Comcast of California/Colorado/Florida/Oregon Inc. To supplement the passage of the ordinance, this resolution is presented which calls for Comcast Inc., to be a good corporate citizen, provide stable employment, respect the rights of its employees, contractors' and subcontractors' employees, including the recognition of their right to organize and bargain collectively without interference.

**Recommendation:** Adopt a resolution supplementing the passage of the Cable Television Franchise Ordinance calling for Quality Service and Labor Harmony.

- \* 24. **Adopt a Resolution Adjusting Salary Ranges for Adult Crossing Guard Classification (Staff Contact: Charlotte Pang, 586-2432/Carmen Valdez, 586-3086)**

**Background:** The City of Milpitas' Personnel Rules and Regulations provides that the City Manager shall set and the City Council shall adopt all compensation ranges for temporary employees.

The Adult Crossing Guards last received a pay adjustment in July of 2000. The Human Resources Department completed a survey in September 2004 of crossing guard programs in Santa Clara and Alameda County that confirms that the Milpitas Crossing Guards are below the average paid in the area. Refer to Attachment A.

The City Council approved a 10% general wage increase for Adult Crossing Guards in the 2005-06 budget. The current salary for the Adult Crossing Guards is \$8.67 - \$10.46. The new proposed salary range will be \$9.54 - \$11.51. This proposed increase would bring the hourly pay more in line with other cities and school districts.

It is recommended that the City Council adjust the salary range for the Adult Crossing Guards to provide for a 10% general wage increase to be effective the first full pay period in July of 2005.

**Recommendation:** Adopt a Resolution approving the 10% general wage increase for the classification of Adult Crossing Guard.

**XX. BIDS AND CONTRACTS**

- \* 25. **Approve Amendment No. 5 to Professional Services Agreement Between the City of Milpitas and Meyers, Nave, Riback, Silver and Wilson (Staff Contact: Steven Mattas, 586-3040)**

**Background:** Meyers Nave provides legal services to the City pursuant to a contract originally approved by the City Council in 1997. The hourly rates provided in the contract for general legal and personnel services and for litigation have not been increased since 2001. The hourly rates provided in the contract for land use cost recovery work have not increased since 2003. The proposed contract amendments, as recommended by the City Attorney Subcommittee, would maintain the current rates through the remainder of 2005 and then provide the following adjustments:

	Current	Effective 01/01/06	Effective 07/01/06	Effective 01/01/07
General Legal and Personnel Services	\$158 per hour (last adjustment July 2001)	\$165 per hour	\$168 per hour	\$171 per hour
Cost Recovery on Land Use Applications	\$195 per hour (last adjustment July 2003)	\$203 per hour	\$207 per hour	\$211 per hour
Litigation – Principal/Of Counsel	\$201.65 per hour (last adjustment July 1, 2001)	\$210 per hour	\$214 per hour	\$218 per hour
Litigation - Associate	\$163.50 per hour (last adjustment July 1, 2001)	\$170 per hour	\$173 per hour	\$176 per hour
Litigation - paralegal	\$92.65 per hour (last adjustment July 1, 2001)	\$96 per hour	\$98 per hour	\$100 per hour

**Recommendation:** Adopt a motion to approve Amendment No. 5 to the existing contract between Meyers Nave and the City of Milpitas.

- \* 26. **Approve Purchase Orders for (1) General Legal and Personnel Services, (2) Arbitration, Grievance and Public Employee Relations Board (PERB) Hearings, and (3) Public Works Construction Litigation Expenses Provided by Meyers Nave for Fiscal Year 2005-2006 (Staff Contact: Steve Mattas, 586-3040)**

**Background:** As part of the approved budget for fiscal year 2005-2006, the City Council authorized a total of \$769,000 for general city attorney services, labor negotiations and for personnel arbitration, grievance and PERB proceedings. The purpose of this staff report is to request that the City Council authorize purchase orders to Meyers Nave for the legal services referenced above. Specifically, the requested purchase orders include: (1) a purchase order in the amount of \$594,000 for general city attorney and personnel legal services for fiscal year 2005-2006 funded from the previously approved City Attorney supplies/services budget and (2) a purchase order in the amount of \$105,000 for arbitration/grievance/PERB proceedings for fiscal year 2005-2006 funded from the City Attorney supplies/services budget. In addition, the

approved 2005-2006 budget includes \$400,000 in the RDA contingent reserve funds for public works litigation expenses. This staff report also requests that the City Council approve a purchase order to Meyers Nave in the amount of \$400,000 for public works construction litigation expenses for FY 2005-2006, with funding from the RDA contingent reserve fund.

**Recommendation:** Authorize issuance of purchase orders to Meyers Nave in the amounts of (1) \$594,000 for general personnel and legal services for fiscal year 2005-2006, (2) \$105,000 for personnel arbitration, grievance and PERB proceedings and \$400,000 for public works construction related litigation expenses.

**\* 27. Approve Interim City Manager Contract for Charles Lawson (Staff Contact: Richard Pio Roda, 586-3040)**

**Background:** By this contract, the City will engage Mr. Charles Lawson to continue to serve as Interim City Manager and Executive Director of the Milpitas Redevelopment Agency from August 8, 2005 until his successor is hired, up to a maximum of 960 hours. This contract is necessary if the Council wishes for Mr. Lawson to continue as the City's interim City Manager because of Mr. Lawson's pending retirement from the City. For such services, the City agrees to pay Mr. Lawson at the bi-weekly rate of \$8,408.36 dollars, which is equal to his current salary as interim City Manager. The City shall also provide Mr. Lawson a city vehicle to be used for City purposes. As the interim City Manager, Mr. Lawson will not accrue vacation, sick leave, or any other form of paid leave except City holidays provided to other City employees. Mr. Lawson will be provided a total of 48 hours of administrative leave, which represents the amount of existing administrative leave time he has currently banked as a City employee. Mr. Lawson shall not be entitled to cash payment for any unused leave granted to him upon the termination of the contract.

**Recommendation:** Approve interim City Manager contract, to be effective August 8, 2005.

**\* 28. Reject Bid and Authorize the Re-advertisement for Bid Proposals: Police Evidence Freezer, Project No. 8159 (Staff Contact: Jorge Bermudez, 586-3404)**

**Background:** This project, which is included in the current Capital Improvement Program (CIP) will provide a walk-in evidence freezer in the basement of the Police Building for the purpose of preserving and storing biological evidence, as is required by recent changes in law regarding the storage and handling of evidence. The Engineer's Estimate for the work is \$80,000.

On June 21, 2005, the City Council approved the project plans and specifications and authorized staff to advertise for construction bid proposals. A single sealed bid proposal was received and was opened on July 20, 2005. The bid proposal from Coulter Construction Inc. is in the amount of \$109,348, approximately 36% higher than the Engineer's Estimate.

The single proposal is significantly higher than the engineer's estimate. Upon review of the proposal it is also apparent that the contractor who submitted the bid is not performing any of the work but is subcontracting it all out which is a factor in the high price. Receipt of a single high bid proposal is also an indication the bid is not competitive. Therefore, it is recommended the single bid be rejected, and staff requests authorization to re-advertise the project for bid proposals.

**Recommendation:**

1. Reject bid.
2. Approve the re-advertisement of the project for bid proposals.

**\* 29. Approve Permittee Dedication and Improvement Agreement For Calaveras Center Project No. 3164 (Staff Contact: Mehdi Khaila, 586-3328)**



**Background:** On December 10, 2003, the City Planning Commission approved the construction of a 5,000 square foot restaurant and a two-story 11,000 square foot office building at 750 E. Calaveras Blvd. As part of this approval, the Permittee is required to execute a secured Dedication and public improvement agreement with the City to dedicate necessary public service utility and sidewalk easement and construct all necessary public improvements along its frontage on Hillview Drive consisting of, curb and gutter, pavement, street lights, signage and striping, fire hydrant, storm drain, sewer and water services.

The improvement plans and Public Service Utility and Sidewalk Easement dedication document are ready for approval. Copies of the Permittee Dedication and Improvement Agreement and excerpts of the improvement plans are included with the Council agenda packet. A complete set of the improvement plans is available for review in the office of the City Engineer.

**Recommendation:** Approve the Permittee Dedication and Public Improvement Agreement and authorize the City Manager to execute the same, subject to the approval as to form by the City Attorney.

**\* 30. Approve Renewal Of Annual Software Support And Maintenance Fees With Cayenta For The Financial System Through June 30, 2006 (Staff Contact: Terry Medina, 586-2703)**

**Background:** In fiscal year 1997/98, the City of Milpitas implemented a new Finance system that supported the financial tracking and reporting needs of the City. The system includes licensed software and maintenance support provided by Cayenta, the vendor of the financial application. Maintenance and support of the system are provided through the renewal of the annual fee.

The annual software support and maintenance fee also entitles the City to any system enhancements that Cayenta develops during the year at no charge to the City. The annual maintenance term with Cayenta expired on June 30, 2005 and requires renewal to ensure continuation of the software license and software support of the Finance System. Funding for the agreement has already been approved through a combination of the Utility Fund and the Information Services operational budget. No additional funding is required for this agreement.

Approval of the annual software support and maintenance fee with Cayenta will provide continued support of the Finance System through June 30, 2006.

**Recommendation:** Authorize the City Manager to approve the payment of the annual software support and maintenance fee to Cayenta.

**\* 31. Appropriate Funds and Award the Bid for Police Computers to Surah, Inc. and HPM Networks (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** The current desktop computers in the Police Department are nearly 5 years old and have reached the end of their projected usefulness. The new CAD system provides enhanced information including mapping with vehicle location (AVL) as well as applications that display the aerial map of the city. The old machines are very slow and running these new applications has taxed their current capabilities. Therefore staff issued an Invitation for Bid for fifty-nine (59) computers and forty-four (44) monitors to sixty-six (66) suppliers on Purchasing's vendor list, ten (10) responded. The following is a recap of the base bids received.

<u>Bidder</u>	<u>Computer</u>	<u>Monitor</u>
HPM Networks, Inc	\$44,550.90	\$8,096.00
NorthBay Networks	\$47,495.00	No Bid
Surah, Inc.	\$41,281.71	\$14,608.00
Netis Technology	\$42,952.00	\$15,312.00

Sysorex	\$42,775.00	\$15,620.00
ePlus Technology	\$45,291.35	\$14,960.00
SHI	\$46,669.00	\$14,696.00
CompUSA, Inc.	\$46,196.41	\$16,499.56
Miracle Computers, Inc.	\$48,380.00	\$14,740.00
CBX Technologies, Inc	\$47,760.50	\$15,655.20
CDW-G	No Bid	No Bid

The cost for 59 upgraded computers is estimated at \$53,451. State Asset Forfeiture Fund has sufficient monies to cover this cost, however only \$25,000 of these funds were approved in the FY 2005-06 budget. An additional budget appropriation for \$28,451 will be needed.

**Recommendation:** (1) Award the bid for the purchase of fifty-nine computers to Surah, Inc. for \$44,687.45 including tax and freight, and forty-four monitors to HPM Networks, Inc. for \$8,764 including tax and freight.

(2) Approve budget appropriation from the State Asset Forfeiture Fund in the amount of \$28,451.

**\* 32. Reject Bid Protest And Award Construction Contract: 2005 Annual Slurry Seal, Project No. 4223, And 2006 Annual Street Resurfacing, Project No. 4229, American Asphalt Repair And Resurfacing Co., Inc., (Staff Contact: Doug De Vries, 586-3313)**

**Background:** On May 17, 2005, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals. This project provides slurry seal on Lassen Avenue, Olympic Drive, Platt Avenue, Platt Court, Pheland Court, Saratoga Drive and Mt. Shasta Avenue.

The project was advertised and sealed bid proposals were opened on June 10, 2005. The Engineer's estimate for all work was \$128,000. The bid proposals ranged from \$96,169 to \$147,439, and the lowest responsive bidder is American Asphalt Repair and Resurfacing Co., Inc.

A bid protest was received from Granite Rock for an alleged sole source specification on the aggregate material. After analysis by staff and the City Attorney's office, the bid protest has been found to be without basis. More than one material supplier can provide the specified aggregate material. Staff recommends rejection of the bid protest, and the City Attorney concurs with this position.

**Recommendation:**

1. Reject bid protest from Granite Rock.
2. Award Construction Contract to American Asphalt Repair and Resurfacing Co., Inc. in the amount of \$96,169.

**\* 33. Approve Budget Appropriation: Annual Sidewalk Replacement Project No. 4067 (Staff Contact: Doug De Vries, 586-3313)**

**Background:** On August 17, 2004, the City Council approved a one-year extension of the contract with Robert A. Bothman, Inc. This agreement is for Robert A. Bothman, Inc. to repair City sidewalks, curbs and gutters. The fund for this repair service is provided by the Annual Sidewalk Replacement project (Project No. 4067).

An additional budget appropriation of \$30,000 is recommended in order to respond to sidewalk replacement at locations throughout the City where the sidewalks have been damaged by tree roots. Root barriers and additional steel reinforcement are placed with the new sidewalks, in order to avoid future damage. Sufficient funds are available from the Street Fund.

**Recommendation:** Approve a budget appropriation for \$30,000 from the Street Fund into Project 4067, Annual Sidewalk Replacement.

- \* 34. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: City Reservoir Evaluation & Upgrades, Project No. 7091 (Staff Contact: Doug De Vries, 586-3313)**

**Background:** Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). This project involves upgrades to the Gibraltar and Ayer Reservoirs, needed to optimize operations as well as upgrades for the conversion to chloramine by San Francisco Public Utility Commission. The improvements include installation of pipes, pipe supports, and TideFlex® valves to insure proper circulation of water in the reservoirs in order to maintain a high level of water quality.

The Engineer's estimate for the work is approximately \$240,000. An additional funding appropriation may be requested at award of a contract. Sufficient funds are available in the Water Fund.

**Recommendation:**

1. Approve plans and specifications
2. Authorize advertising for bid proposals

- \* 35. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: Building Improvements (Tasman Gateway Monument Maintenance Access), Project No. 8135 (Staff Contact: Doug DeVries, 586-3313)**

**Background:** Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). This project is located at the corner of Tasman Drive and Alder Drive. The project provides a grated ceiling/floor and a retractable ladder with cage on the existing monument and significantly reducing the set up time and labor required to support maintenance workers. This project benefits the City and the maintenance staff by providing safer and easier access performing required maintenance tasks such as cleaning the monument, replacing lights and changing the clock time.

The Engineer's Estimate for the work is approximately \$45,000. Complete plans and specifications are available for review in the office of the City Engineer.

**Recommendation:**

1. Approve plans and specifications
2. Authorize advertising for bid proposals

- \* 36. **Approve Budget Appropriation and Award Construction Contract: 2005 ADA Sidewalk Ramps Project No. 4226 And Building Improvements Project No. 8135 (Staff Contact: Doug De Vries, 586-3313)**

**Background:** On June 7, 2005, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals. This project provides eleven ADA sidewalk ramps and minor sidewalk improvements along Escuela Parkway between Washington Drive and Russell Lane. The cost for this work is to be funded by the 2005 ADA Sidewalk Ramps, Project No. 4226 and an additional appropriation of \$20,000 from the Street Fund.

This project also includes replacing concrete driveways for Fire Station Number 2 and Fire Station Number 3. The cost for the driveways (\$35,650) is to be funded by the Building Improvements Project, Project No. 8135.

The project was advertised and sealed bid proposals were opened on July 12, 2005. The Engineer's estimated construction cost for all work was \$75,000. Bid proposals ranged from \$84,625 to \$132,800, and the lowest responsible bidder is JJR Construction, Inc.

**Recommendation:**

1. Award Construction Contract to JJR Construction, Inc. in the amount of \$84,625.
2. Approve a budget appropriation for \$20,000 from the Street Fund into Project 4226, for 2005 ADA Sidewalk Ramps.

**\* 37. Authorize the City Manager to Execute the Agreement Amendment: JMH Weiss, Inc., Abel Street Midtown Improvements Project No. 8157 (Staff Contact: Steve Erickson, 586-3414)**

**Background:** On March 25, 2004, the City Council awarded a consultant services agreement to JMH Weiss, Inc. to provide base mapping, utility mapping, and to design street improvements on Abel Street from Weller Lane to Great Mall Parkway to address the appropriate upgrades and additions required to create a boulevard corridor on Abel Street.

Staff recommends that JMH Weiss perform additional design coordination with the Santa Clara Valley Water District for construction along lower Penitencia Creek, and traffic engineering design services for the relocation of existing signal poles and controllers behind sidewalks where they will be out of the pedestrian travel way, to design signal loop and conduit replacements, to design the isolation of the existing signal interconnect cable along Abel Street for operation during construction, to calculate required street lighting levels at the intersections, to prepare right-of-way documents for the acquisition of required public service and utility easements, and to provide electrical design for revised street light circuitry and electrical services for future traffic signals.

As part of the agreements between the City, the County of Santa Clara, and Mid Peninsula Housing, the City agreed to provide mapping of the parcel to be used for the County Health Center and the Senior Housing projects. Staff proposes to use JMH Weiss to create a tentative and a final parcel map for the dedication of right of way, and the adjustment of the common property line between the parcels for both projects.

Staff has negotiated a fee for these additional services not to exceed \$116,000.00, which is considered reasonable for the work. Sufficient funds are available in the project budget to cover these additional services.

**Recommendation:** Authorize the City Manager to execute an Agreement Amendment with JMH Weiss in the amount of \$116,000.00 subject to approval as to form by the City Attorney.

**\* 38. Approve Amendments No. 4 and No. 5 to Valley Oil Company Contract (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** On October 2, 2002 Valley Oil Company was awarded a (1) one-year contract with (2) one-year renewal options (total three years) to provide gasoline and diesel fuel to the City. Amendments No. 4 and No. 5 increase the contract amount from \$360,000 to a maximum compensation amount of \$499,332.46 which in accordance with the contract reflects the increase in wholesale fuel prices paid by the contractor. Amendment No. 4 increases the contract amount by \$39,332.46 and is needed to maintain fuel reserves for fleet operations until the end of fiscal year 04-05. The associated payment of the outstanding invoices for June was completed under the Emergency Power of the Purchasing Agent. Amendment No. 5 increases the contract amount by

\$100,000.00. The additional compensation is an estimate based on current usage and fuel price trends, but should be sufficient to get us through to the contract's end on October 1, 2005.

(There are sufficient funds in the Public Works Department operating budget for these fuel purchases.)

**Recommendation:** Approve Amendment No. 4 and No. 5 to the Valley Oil Company contract subject to approval as to form by the City Attorney, and authorize an increase in the not to exceed amount to a maximum compensation of \$499,332.46 as recommended by staff.

- \* 39. **Award Construction Contract; Shade America, Inc.: Tot Lot Sunshade Structure, Project No. 8102 (Staff Contact: Jorge Bermudez, 586-3404)**

**Background:** This project is included in the current Capital Improvement Program (CIP) and provide a sunshade over the tot lot area and play structure at the Community Center.

On June 21, 2005, the City Council approved the project plans and specifications and authorized staff to advertise for construction bid proposals. The Engineer's Estimate for the work is approximately \$50,000. The project was advertised and sealed bid proposals were opened on July 18, 2005. Only one responsive bid proposal was received from Shade America for \$41,000. There are sufficient funds in the project budget to award this project.

**Recommendation:** Award the Tot Lot Sunshade Structure contract to Shade America, Inc. for the amount of \$41,000.

## **XXI. CLAIMS AND DEMANDS**

- \* 40. **Authorize the Purchasing Agent to Dispose of Two Surplus Police Vehicles at Auction (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** The City has two vehicles a 1993 T-Bird License # 3DTK043 and a 1995 Crown Victoria License # 010586 that have reached the end of their useful lives. The cost to repair both vehicles exceeds their value and they have been removed from service. Nation Wide Auction estimates the value of these units at auction to range from \$500.00 to \$1,500.00 each. Staff requests authorization to dispose of the vehicles at auction, pursuant to Section I-2-10.03 of the Municipal Code "Disposal of more than \$500."

**Recommendation:** Approve the request to auction the Police Vehicles.

- \* 41. **Approve a Change Order to PO C422306 to Interstate Paving and Grading for Emergency Road Repair (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** On June 4, 2005 a Semi Truck made an illegal U-turn and collided with an SUV on McCarthy Boulevard north of Montague spilling approximately 50 gallons of diesel fuel. The spill was cleaned up by Consolidated Waste Industries, Inc. and is being paid for directly by the trucking company's insurance. By the time the spill was cleaned up, diesel fuel had saturated the asphalt to a depth of 6 inches. Interstate Grading and Paving, Inc. was performing base repair/resurfacing for the City of Milpitas on McCarthy Boulevard near the site of the accident. Due to the heavy traffic on McCarthy Boulevard, it was determined that the easiest and fastest way to handle the problem was to have Interstate Grading and Paving, Inc. repair the damage to the road. This was accomplished using the emergency Power of the Purchasing Agent. The City will also seek reimbursement for the work done by Interstate Grading and Paving, Inc. (Funds are available from the Fire department operating budget for these services)

**Recommendation:** Approve a change order to Interstate Grading and Paving, Inc. Purchase Order C422306 for \$16,017.26 to cover the cost of the emergency road repairs.

\* 42. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$7,960.24 to DARE America Merchandise for proprietary t-shirts, supplies and awards for the DARE program for the Police Department. (Funds are available from the Police Department operating budget for this purchase.)
2. \$6,139.00 to Simplex/Grinnell LP for the removal and replacement of the deficient fire alarm system at the Community Center. The work was performed as an emergency under section I-2-5.04 of the Municipal Code "Emergency Authority of Purchasing Agent" because of the eminent threat to public safety, (Funds are available from the Community Center Improvement Project CIP #8102 for this purchase.)
3. \$32,100.00 to the Milpitas Chamber of Commerce for funding of the visitor bureau services, various publications, Business Experience Day, and retail promotions for FY 2005-06. (Funds are available from the City Council operating budget for this purchase.)
4. \$17,420.00 to ACCO to provide the annual HVAC maintenance and service at City Hall. Due to the customized nature of the proprietary software used in the HVAC control system, this is a Sole Source purchase. (Funds are available from the Facilities Maintenance operating budget for this purchase.)
5. \$24,500.00 to Alice Wright for citywide shopping cart retrieval services. On February 20<sup>th</sup>, 2002 the City entered into a multi year contract for these services. This represents the annual payment for FY 05-06. (Funds are available from the Neighborhood Preservation operating budget for this purchase.)
6. \$18,900.00 to ThyssenKrupp Elevator Corp. for annual elevator service and preventive maintenance at City Hall and the Police/Public Works building. Due to the customized nature of the proprietary software used in the HVAC control system, this is a Sole Source purchase. (Funds are available from the Public Works Department operating budget for this service.)
7. \$6,000.00 to Crayton Jones for annual property rental of the Police firing range and training center for the Police Department. (Funds are available from the Police Department operating budget for this service)
8. \$5,983.00 to Golden Gate Mechanical for the removal and replacement of the failed HVAC compressor at the Sal Cracolice Senior Center. The work was performed as an emergency under Section I.2.5.04 of the Municipal Code, "Emergency Authority of Purchasing Agent", because of the eminent threat to public health. Funds are available from the Public Works Department operating budget for this service)
9. \$12,500.00 to Tecogen© Natural Gas for annual preventive maintenance service, (conducted quarterly) for the co-generation system at the Sports Center for the Recreation Services Division. (Funds are available from the Recreation Services operating budget for this service)

10. \$14,190.00 to Alliance Occupational Medicine for new hire exams, DMV medical exams, DOT testing, Workers' Comp exams and Hazardous Material Physicals for the Human Resources Department. (Funds are available in the Human Resources Department operating budget for these services.)
11. \$7,533.79 to Folger Graphics for production of 13,000 postcards and 13,000 subscription mailers to announce the Single Family Recycling program's change to single stream recycling. (Funds are available in the Engineering Division operating budget for this service)

**Recommendation:** Approve the payment requests listed above.

**XXII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, AUGUST 16, 2005, AT 7:00 P.M.**